IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

3:07-cr-00091-bbc

v.

JOHN HIGH,

Defendant.

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Defendant John High has moved for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c)(1). He contends that the court erred in allowing the government to elicit hearsay testimony from his probation officer and in allowing in "other act" evidence through the questioning of defendant's mother. In addition, he argues that the evidence was insufficient to support the jury's verdict. I will deny the motion as to the first contention because it is not an arguable issue and will give the government an opportunity to be heard on the other two contentions.

The testimony elicited from defendant's probation officer was not hearsay. Fed. R. Evid. 801(d)(2) makes that explicit: it provides that a "statement is not hearsay if" it is offered against a party and is the party's own statement. Defendant's probation officer was

asked by the government what defendant had told her in June 2005 about where he was living. It was not an error to allow her to testify that he had told her he was living at 6809 Schroeder Road (his mother's residence and the location of the firearm he was charged with possessing).

As to the information elicited from defendant's mother and the issue of the sufficiency of the evidence, I will give the government an opportunity to respond to the motion.

ORDER

IT IS ORDERED that the government may have until December 28, 2007, in which to respond to defendant's motion for acquittal. (It is not necessary for it to respond to defendant's contention that his probation officer's testimony was hearsay.) Defendant may have until January 11, 2008, in which to serve and file a reply brief.

Entered this 6th day of December, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge